UNITED NATIONS

CAAS

International Convention against *Apartheid* in Sports

Distr.
LIMITED

CAAS/SP/1992/L.1
3 June 1992

ORIGINAL: ENGLISH

MEETING OF THE STATES PARTIES
Eighth meeting
10 June 1992

PROVISIONAL AGENDA

1. Opening of the meeting.

2. Election of officers.

3. Adoption of the agenda.

4. Consideration of the status of the International Convention against Apartheid in Sports.

5. Arrangements for the 1992 session of the Commission against Apartheid in Sports.

6. Other matters.

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STATUS OF THE INTERNATIONAL CONVENTION AGAINST APARTHEID IN SPORTS

Note by the Secretariat

INTRODUCTION

1. The States parties to the International Convention against Apartheid in Sports held an informal meeting on 29 January 1992 where the status of the Convention was discussed in the light of recent developments in South Africa and, in particular, of General Assembly resolution 46/79 A of 13 December 1991. In paragraph 9 of the resolution, the Assembly called upon the international community, in view of progress made in overcoming obstacles to negotiations, to resume academic, scientific and cultural links with democratic anti-apartheid organizations and the individuals in these fields, to resume sports links with unified non-racial sporting organizations of South Africa that had received endorsement by appropriate non-racial sporting organizations within South Africa and to assist disadvantaged athletes in that country.

2. It was decided at the meeting that the views of the Legal Counsel of the United Nations should be sought concerning the status of the Convention and the functions of the Commission and the meeting of the States parties.

I. OPINION OF THE LEGAL COUNSEL

3. By a note verbale dated 29 January 1992, the Assistant Secretary-General for the United Nations Centre Against Apartheid addressed the following questions to the Legal Counsel:

(a) What is the status of the International Convention against Apartheid in Sports in the light of General Assembly resolution 46/79 A?

(b) Can a Meeting of the States Parties decide on the status of the Convention and/or assume the functions of the Commission against Apartheid in Sports, or is a meeting of the Commission imperative?

4. On 12 February 1992, the Legal Counsel responded to the above-mentioned questions as follows:

> "Regarding the first question, as stated in our memorandum of 20 October 1992, the scope of the International Convention against Apartheid in Sports is, as is made clear by article 1 (a) and article 10 (5) of the Convention, not restricted to South Africa. Therefore, General Assembly resolution 46/79 A, paragraph 9, by which the international community is called upon to resume sports links with unified non-racial sporting organizations within South Africa, does not change the status of the Convention. Furthermore, General Assembly resolutions are recommendatory rather than mandatory and cannot by themselves alter the legal character of international conventions such as the International Convention against Apartheid in Sports which is an independent treaty.
>
> "Turning to the second question, according to article 20 (1) of the Convention, it is the Meeting of the States Parties that can decide on amendments and revisions of the Convention. Accordingly, if the States parties wished to redefine the legal status of the Convention the appropriate amendment would have to be adopted by a majority of the States parties present and voting at a conference convened for the purpose. Thereafter the amendment in accordance with article 20 of the Convention would have to be submitted to the General Assembly of the United Nations for approval. In this manner the States parties could decide whether or not and when the Convention would cease to function."

5. On 28 February 1992, the Assistant Secretary-General for the United Nations Centre Against Apartheid circulated these questions and answers to the Permanent Representative of the States parties.

6. By 3 June 1992, the Secretariat had received replies from the following States: Bahamas, Barbados, Burkina Faso, Ghana, Mexico, Togo, Trinidad and Tobago, United Republic of Tanzania, Yugoslavia and Zambia. The replies are set out in the annex to the present report.

II. CONCLUSION

7. The Chairman of the Meeting of the States Parties requested the Secretariat to arrange for a formal Meeting of the States Parties where this issue as well as other questions relating to the convening of the 1992 session of the Commission against Apartheid in Sports would be discussed. The provisional agenda for the meeting is contained in document CAAS/SP/1992/1.

Annex

REPLIES FROM STATES PARTIES

BAHAMAS

[Original: English]

The Permanent Mission of the Bahamas to the United Nations presents its compliments to the Assistant Secretary-General for the United Nations Centre Against Apartheid and has the honour to refer to the latter's note dated 28 February 1992 in which the views of the Government were sought regarding the status of the Convention and the role of the Commission.

In this connection, I am to advise that the Government of the Bahamas concurs with the views expressed by the Legal Counsel and further supports the convening of a formal Meeting of the States Parties on these issues.

BARBADOS

[Original: English]

The Chargé d'affaires a.i. of the Permanent Mission of Barbados to the United Nations presents her compliments to the Assistant Secretary-General for the United Nations Centre Against Apartheid and with reference to the latter's note verbale dated 28 February 1992 regarding the opinion of the Legal Counsel of the United Nations that General Assembly resolution 46/79 A does not affect the status of the International Convention against Apartheid in Sports, has the honour to inform him that Barbados supports the convening of the Commission against Apartheid in Sports.

BURKINA FASO

[Original: French]

The Permanent Mission of Burkina Faso to the United Nations presents its compliments to the Assistant Secretary-General for the United Nations Centre Against Apartheid and, in reply to his note dated 28 February 1992, has the honour to inform him of the view of the Government of Burkina Faso regarding the convening of an official Meeting of the States Parties to the International Convention against Apartheid in Sports.

Burkina Faso fully shares the opinion of the Office of the Legal Counsel on questions concerning the status of the Convention and the role of the Commission against Apartheid in Sports.

GHANA

[Original: English]

The Permanent Representative of Ghana to the United Nations presents his compliments to the Assistant Secretary-General for the United Nations Centre Against Apartheid and has the honour, with reference to the latter's note dated 28 February 1992, to state that the Government of Ghana, a State party to the International Convention against Apartheid in Sports, is in total agreement with the views of the Legal Counsel on the status of the Convention and the relative roles of the meeting of the States Parties and the Commission against Apartheid in Sports.

As an independent treaty body, the Meeting of the States Parties to the International Convention against Apartheid in Sports is not encumbered by the decisions of any other body, including the United Nations. It is pertinent to recall, in this regard, that in its resolution 40/64 G of 10 December 1985, the General Assembly did not approve or establish the Convention. It only adopted and opened it for signature and ratification. The Convention is a treaty by which certain Member States, coincidentally members of the United Nations, undertook to take all possible measures within their own States and in their relations with other States to hasten the elimination of apartheid in sports.

The Legal Counsel has rightly observed that General Assembly resolutions are recommendatory rather than mandatory. Even though Ghana considers resolution 46/79 A a positive contribution to the efforts of the international community for the eradication of apartheid, the decisions therein are not mandatory on the States parties to the Convention. States parties should have the opportunity, through their own procedures and mechanisms or institutions agreed on in the Convention to consider whatever action they should take in implementation of the provisions of the Convention, particularly article 10.

Articles 11, 12, 13 and 14 clearly define the status, role and functions of the Commission against Apartheid in Sports. It is only through a successful process of amendments on the basis of article 20 that the Meeting of States Parties can assume the functions of the Commission.

The Government of Ghana wishes to stress that the International Convention against Apartheid in Sports is not intended exclusively for the elimination of apartheid in sports in South Africa. It is to ensure universal compliance with the Olympic principle of non-discrimination (art. 10 (i)). Article 1 defines apartheid as a system of institutionalized racial segregation and discrimination for the purpose of establishing and maintaining domination by one racial group of persons over another racial group of persons and systematically oppressing them such as that pursued by South Africa.

The elimination of apartheid in sports in South Africa, should therefore not necessarily mean that the treaty objectives of States members have been achieved. In this sense, the adoption of resolution 46/79 A by the General

Assembly is irrelevant to the status of the International Convention against Apartheid in Sports. The Convention is as valid today as it was when the General Assembly adopted its resolution 40/64 G. It is hoped that the views of the Legal Counsel as conveyed in the note under reference would facilitate the early convening of the meeting of the Commission to enable it to carry out its functions under the Convention.

MEXICO

[Original: Spanish]

The Permanent Mission of Mexico to the United Nations presents its compliments to the United Nations Centre Against Apartheid and, with regard to the latter's note dated 28 February 1992, has the honour to state that the Government of Mexico considers it appropriate to hold a formal Meeting of the States Parties to the International Convention against Apartheid in Sports for the purpose of reviewing the status of the Convention and the role of its Commission in the light of recent developments in South Africa.

With regard to the comments requested concerning the status of the Convention, the Permanent Mission of Mexico wishes to inform the United Nations Centre Against Apartheid that the Government of Mexico is giving careful consideration to its response.

TOGO

[Original: French]

Togo has been following with great interest the recent events in South Africa and the evolution of the political and sporting situation in that country.

It should be noted that great progress has been made in those areas thanks to the economic sanctions.

In sports, the first indication of the great progress achieved has been the recognition of the multiracial Olympic Committee of South Africa by the International Olympic Committee. The former has thus deservedly been invited to the next Olympic Games, to be held at Barcelona, Spain, this year.

Again, at its fourteenth regular session at Hamamet, Tunisia, the Supreme Council for Sport in Africa recognized the multiracial sporting associations of South Africa, one for each sporting discipline.

It was this change that permitted the recent tours of South Africa by a delegation from the African Football Confederation and another from the African Amateur Athletic Confederation led by its President, Lamine Diack.

However, this positive evolution must be supported by the continuous effort to achieve total integration of Blacks and Coloured into the civic and sporting life of South Africa.

Accordingly, South Africa should not yet be given carte blanche.

The slow but steady progress that has been achieved must continue, as has been stated by the President of the African National Congress of South Africa (ANC), Mr. Nelson Mandela, who continues to call for caution while eschewing a complacent optimism, for much still remains to be done.

On the second question concerning the status of the Convention, Togo takes the view that a Meeting of the States Parties is necessary and indispensable to review the situation.

At that Meeting, the States parties will pronounce on the status of the Convention, which they will update with a view to concerted international action to eliminate apartheid completely and bring about a united, non-racial and democratic South Africa.

In conclusion:

(a) Togo notes with satisfaction the recent changes in South Africa;

(b) Togo favours an urgent conference of the States parties, which would be empowered to adopt amendments and revisions to the Convention, particularly to article 20, paragraph 1.

TRINIDAD AND TOBAGO

[Original: English]

The Chargé d'affaires a.i. of Trinidad and Tobago to the United Nations presents his compliments to the Assistant Secretary-General for the United Nations Centre Against Apartheid and has the honour to refer to his note dated 28 February 1992 concerning the International Convention against Apartheid in Sports.

Trinidad and Tobago concurs with the opinions expressed by the Legal Counsel of the United Nations regarding the status of the International Convention and the functions of the Commission against Apartheid in Sports, as conveyed in the Assistant Secretary-General's note dated 28 February 1992. The Government is therefore in favour of the convening of the Commission.

UNITED REPUBLIC OF TANZANIA

[Original: English]

The Permanent Mission of the United Republic of Tanzania to the United Nations presents its compliments to the Assistant Secretary-General for the United Nations Centre Against Apartheid and has the honour to refer to the latter's note dated 28 February 1992 conveying the views of the United Nations Legal Counsel on the status of the Convention against Apartheid in Sports and the role of the Commission in the light of General Assembly resolution 46/79 A.

The Permanent Mission wishes to state that it entirely concurs with the views expressed by the Legal Counsel of the United Nations that General Assembly resolution 46/79 A, paragraph 9, authorizing the resumption by the international community of sports links with unified non-racial sporting organizations within South Africa does not change the status of the Convention. It also shares the view that General Assembly resolution 46/79 A has not altered the character of the International Convention against Apartheid in Sports or given authority to contracting parties to assume the functions of the Commission or to act in ways which affect the smooth functioning of the Commission.

As stated by the Legal Counsel, only a Meeting of States Parties to the Convention can decide on amendments or revisions to the Convention. General Assembly resolution 46/79 A does not purport to be an amendment or revision to the Convention and it is wrong to use it to prevent the Commission from doing its work.

In this connection, it should be observed that members of the Commission are not unaware of recent developments in South Africa. The United Republic of Tanzania is confident that if they should feel that the situation has changed sufficiently to warrant the winding up of their work, they will not shirk from the responsibility of so advising the contracting parties to the Convention.

In view of the above and taking into consideration the fact that the Convention is still in force and the Commission against Apartheid in Sports is still in existence, the Commission should be enabled to meet so as to discharge its mandate in accordance with articles 10 and 12 of the Convention. It is the hope of the Permanent Mission that contracting parties that had raised objections to the efforts to convene a meeting of the Commission will now feel able to withdraw those objections.

YUGOSLAVIA

[Original: English]

The Permanent Mission of Yugoslavia to the United Nations presents its compliments to the Assistant Secretary-General for the United Nations Centre Against Apartheid and, with reference to his note dated 28 February 1992, has the honour to inform him that the Government of Yugoslavia, as the State party to the International Convention against Apartheid in Sports, agrees with the opinion of the Legal Counsel of the United Nations concerning the status of the Convention in the light of the recent developments in South Africa and, in particular, resolution 46/79 A, which the General Assembly adopted by consensus during its forty-sixth session.

ZAMBIA

[Original: English]

The Permanent Mission of the Republic of Zambia to the United Nations presents its compliments to the Assistant Secretary-General for the United Nations Centre Against Apartheid and has the honour to refer to the latter's note verbale dated 28 February 1992 regarding the status of the International Convention against Apartheid in Sports in the light of the recent developments in South Africa and in particular, General Assembly resolution 46/79 A.

The Permanent Mission of the Republic of Zambia to the United Nations has noted and is in full agreement with the views of the Legal Counsel.